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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

[Docket No. FAA-2004-16944] - 4

OPERATING LIMITATIONS AT CHICAGO O'HARE
INTERNATIONAL AIRPORT

ACTION: Notice of scheduling reduction meeting and request for information.

SUMMARY: The FAA will conduct a meeting to discuss flight reductions at Chicago's O'Hare International Airport (O'Hare) to reduce overscheduling and flight delays during peak hours of operation at that airport. This meeting is open to all scheduled carriers, regardless of whether they currently provide scheduled service to O'Hare, and to the airport operator of O'Hare. Registration in advance of the meeting is requested. In addition, the FAA invites interested persons to submit written information on such schedule reductions. The FAA plans to issue its decision on delay reductions in a final order.

DATE: *Scheduling reduction meeting.* The FAA will hold the scheduling reduction meeting on August 4, 2004, beginning at 9:30 a.m., and the meeting will continue on August 5, 2004, if necessary.

Written information. Any written information on the subject of schedule reductions at O'Hare, including data and views, must be submitted by August 11, 2004. To the extent possible, the FAA will consider late-filed submissions in making its determination in its final order.

DEPT. OF TRANSPORTATION
04 JUL 28 PM 5:00

ADDRESS: *Scheduling reduction meeting.* The meeting will be held in the Bessie Coleman Conference Center; Federal Aviation Administration; Orville Wright Building, Second Floor; 800 Independence Avenue, SW; Washington, DC.

Written information. You may submit written information, identified by docket number FAA-2004-16944, by any of the following methods:

- Web site: <http://dms.dot.gov>. Follow the instructions for submitting information on the DOT electronic docket site.
- Fax: 1-202-493-2251.
- Mail: Docket Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Nassif Building, Room PL-401, Washington, DC 20590-001. If sent by mail, information is to be submitted in two copies. Persons wishing to receive confirmation of receipt of their written submission should include a self-addressed stamped postcard.
- Hand Delivery: Docket Management System, Room PL-401, on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number FAA-2004-16944 for this notice at the beginning of the information that you submit. Note that the information received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Submissions to the docket that include trade secrets, confidential, commercial, or financial information, or sensitive security information will not be posted in the public docket. Such information will be placed in a separate file to

which the public does not have access, and a note will be placed in the public docket to state that the agency has received such materials from the submitter.

FOR FURTHER INFORMATION AND TO REGISTER TO ATTEND

CONTACT: Gerry Shakley, System Operations, Air Traffic Organization; telephone--(202) 267-9424; facsimile--(202) 267-7277; e-mail--gerry.shakley@faa.gov.

Registration must occur on or before Monday, August 2, 2004.

SUPPLEMENTARY INFORMATION: The Federal Aviation Act (the Act) at 49 U.S.C. § 41722, authorizes the Secretary of Transportation to request air carriers to attend a meeting with the FAA Administrator to discuss flight schedule reductions at any severely congested airport during peak operating hours. On January 8, 2004, following several months in which delays at O'Hare and emanating from the airport through the national airspace system had reached unacceptable levels, the Administrator determined that such a meeting regarding severe congestion at O'Hare was necessary. On January 16, 2004, the Secretary then made a similar determination that a meeting was needed to meet a serious transportation need or important public benefit.

Before the scheduling reduction meeting was to occur, the FAA separately obtained the agreement of the two largest operators at O'Hare, American Airlines and United Airlines, to reduce their scheduled operations, and the FAA thereafter issued an order implementing the reductions in their scheduled service during peak hours. *See* FAA Orders issued in this Docket on January 21, 2004, and amended on April 21, 2004. In these Orders, we made clear our intention to conduct a scheduling reduction meeting if the consensual reductions did not achieve their desired effect.

The Orders limiting scheduled operations during certain hours at O'Hare by American Airlines and United Airlines will expire as of October 30, 2004. Moreover,

even with the reductions by those carriers, the statistics for air traffic at O'Hare continue to show overscheduling and excessive delays. Daily scheduled operations published for August remain approximately 170 flights above the daily August 2003 scheduled flights. Several of the busiest traffic days ever recorded at O'Hare occurred since late June. On July 1, there were 2,968 operations, just 8 fewer than the previous record on August 31, 2001. In May 2004, a NAS monthly record of 14,495 total delays was also established. Although the level of delays has fluctuated from month to month, and weather has played a major factor, the overall trend of delays remains unacceptably high when recent periods are compared to the period before November 2003. The cumulative number of delays for this calendar year as of June 30 is 58,578; that figure is more than the respective full-year totals for each of 2000, 2001, and 2002.

Based on these and other factors, the Administrator has again determined, pursuant to the Act, that O'Hare is a severely congested airport and that a scheduling reduction meeting is necessary in order to discuss flight reductions in an effort to reduce overscheduling and flight delays at O'Hare during peak operating hours. The Secretary of Transportation has also determined, pursuant to the Act, that a scheduling reduction meeting regarding flight reductions at O'Hare is necessary to meet a serious transportation need or to achieve an important public benefit. In light of these determinations, the FAA will conduct a scheduling reduction meeting pursuant to the Act.

The FAA will hold the scheduling reduction meeting on August 4, 2004, beginning at 9:30 a.m., at the location indicated above. The meeting will continue on August 5, 2004, if necessary. As provided in the Act, no later than forty-eight hours before convening the meeting, the FAA will identify on the FAA's website,

<http://www.faa.gov>, the peak periods of operation at O'Hare and the FAA's targets for flight operations during the peak periods of operation.

The FAA will transcribe the scheduling reduction meeting including those sessions in which air carriers offer flight reductions to the FAA, as provided for by the procedures outlined below. The transcript and other documents related to the meeting will be available for inspection in Department of Transportation Docket FAA-2004-16944. In addition, any interested person may submit written information to the public docket no later than August 11, 2004. The docket is accessible through the Department of Transportation's Docket Management System and may be accessed via the Internet at <http://dms.dot.gov>.

After conducting the scheduling reduction meeting and considering all submitted information, the FAA will publish its final order on delay reductions at O'Hare in the Federal Register. The order is expected to be effective for no more than six months and may restrict service during peak hours by all air carriers, including air carriers that are not currently operating at O'Hare.

To ensure that proper accommodations are afforded to the meeting, all scheduled carriers that wish to attend the scheduling reduction meeting should register for the meeting on or before August 2, 2004. Registration may be accomplished by contacting Gerry Shakley, System Operations, Air Traffic Organization; telephone--(202) 267-9424; facsimile--(202) 267-7277; e-mail--gerry.shakley@faa.gov, identifying the air carrier and its intention to attend the meeting, and identifying who will represent the air carrier at the meeting.

Because the scheduling reduction meeting and all preparations for it are subject to the antitrust laws, the FAA has worked closely with the Department of Justice, Antitrust

Division on procedures for the conduct of the meeting that should help ensure legal compliance. Copies of the FAA letter to the Antitrust Division and their response are incorporated below. As noted in this correspondence, communications among carriers regarding competitively sensitive information could result in a violation of the antitrust laws and lead to civil or criminal liability. Thus, the procedures outlined in the notice provide for a series of scheduling reduction sessions to be conducted separately by FAA staff with each air carrier attending the meeting. We will also meet with representatives of the airport operator. During those sessions any scheduled air carrier or the airport operator, if in attendance, may provide other supplemental information to the FAA regarding the targeted schedule reductions at O'Hare. The FAA requests the cooperation of all participants at the meeting in adhering to the procedures outlined in the notice.

The text of the FAA letter describing the planned procedures and the text of the Department of Justice letter assessing those procedures are as follows:

July 14, 2004

R. Hewitt Pate

Assistant Attorney General

Antitrust Division, Room 3109

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

Dear Mr. Pate:

We anticipate that the Secretary of Transportation will soon determine, pursuant to 49 U.S.C. § 41722,¹ that it is necessary to convene a meeting of air carriers with the

¹ [The text of a footnote quoting 49 U.S.C. § 41722 is omitted here.]

Administrator of the Federal Aviation Administration (FAA) to discuss flight reductions at Chicago O'Hare International Airport (O'Hare) in an effort to reduce overscheduling and flight delays during peak hours of operation. Because of severe congestion at that airport and the resulting delays and inconvenience to the traveling public, the Administrator intends to convene such a meeting in the immediate future. The purpose of this letter is to describe the format and procedures for the meeting and to ensure that, provided the meeting is conducted in accordance with this memorandum, the Department of Justice would not seek to challenge as a violation of the U.S. antitrust laws any air carrier's attendance at or participation in the meeting or an air carrier's actions taken to comply with an Order of the Administrator issued as a result of the meeting.

Meeting Procedures:

1. Notice to Air Carriers and Other Interested Parties

To assist the Administrator in formulating flight reduction targets, as contemplated by 49 U.S.C. § 41722, and to identify the air carriers that will attend the meeting, the Administrator will send a letter notifying the O'Hare airport operator and each scheduled air carrier serving O'Hare of the meeting. The letter will describe the necessity for the meeting and will identify the periods during a representative business day that the Administrator considers severely congested. The letter will establish the date and time for the meeting and will designate Washington, DC, as the meeting's location. The letter will advise that the meeting and all preparations for it are subject to the antitrust laws and that communications among air carriers regarding competitively sensitive information, such as markets served, prices charged, and marketing plans, could result in a violation of the antitrust laws. Copies of the letter will be sent to the Antitrust

Division, as well as to the Air Transport Association, Regional Airline Association, and Air Carrier Association of America.

The FAA Air Traffic Organization will separately provide the O'Hare airport operator and each air carrier serving O'Hare with a summary showing the FAA's current information as to scheduled arrivals and departures at O'Hare (including code-share flights) for each air carrier during each 15 minute period from 6 a.m. to 11 p.m. on a representative business day. A letter enclosed with this summary will request that each air carrier confirm the FAA's current information as to that air carrier's scheduled operations at O'Hare, respond as to whether the air carrier will attend the schedule reduction meeting, and if the air carrier will attend, identify whom its representative will be.

The FAA also will publish in the Federal Register a notice of the meeting that identifies the basis for the meeting, when and where the meeting will take place, and the manner in which the meeting will be conducted. The Federal Register notice will invite all scheduled air carriers to attend and will specify that a transcript of the meeting will be available for inspection in a public docket opened within three business days after the Administrator formally adjourns the flight reduction meeting.

2. Establishment and Notice of Flight Reduction Targets

The Administrator shall establish flight reduction targets, based on the number of flight operations scheduled for a representative business day. As required by the statute, at least 48 hours prior to the meeting, the Administrator will publish notice of these targets on the FAA's website. The notice will specify the total number of reductions sought from the total number of flight operations conducted. The notice will not include carrier-specific limitations, targets, or suggested reductions.

3. *Conduct of the Meeting*

The meeting will be conducted under the following procedures:

- a. The meeting will be chaired by the Administrator or by a delegate of the Administrator.
- b. The meeting will be open to attendance by the O'Hare airport operator and all scheduled air carriers, and the FAA will transcribe the meeting.
- c. Representatives of the Department of Justice will be invited to attend.
- d. At the beginning of the meeting, the FAA will announce that, pursuant to advice from the Department of Justice, no communication will be permitted by any air carrier representative in the presence of any representative of another air carrier regarding the subject of flight reductions at O'Hare or regarding any other competitively sensitive information, including but not limited to markets served, prices charged, and marketing plans.
- e. The Administrator will then distribute to the meeting's attendees a list of the number of flights, not specific as to air carrier, during each 15-minute period from 6 a.m. until 11 p.m. on a representative business day, and she will identify any periods that she considers severely congested, as well as general targets for flight reductions during those periods.
- f. Each air carrier serving O'Hare and attending the meeting will then be invited into a separate and confidential session with representatives of the FAA Air Traffic Organization, at which the air carrier will be asked to offer flight reductions or schedule modifications. Only representatives of that air carrier and the U.S. government will be permitted to attend the offer sessions; however, the sessions will be transcribed.

- g. Any offer of flights reductions should specify the precise number of arrivals and departures, if any, the submitting air carrier is willing to remove from each of the severely congested periods identified by the Administrator, indicating whether the flight operation(s) would be cancelled or moved to another time period. The offer may not be explicitly contingent on specific flight reductions by other air carriers but may be conditioned on the Administrator's implementation of an overall reduction of specified numbers of flight operations toward the target during the periods in question. The offer may not contain information from the air carrier on markets served, prices charged, marketing plans or other competitively sensitive matters.
- h. After the completion of all such sessions, the FAA Air Traffic Organization: will review the offers made; will revise, in light of the offers made, the list of the number of flights, not specific as to air carrier, during each 15-minute period from 6 a.m. until 11 p.m. on a representative business day; and will consult with the Administrator. The Administrator will distribute to the meeting's attendees the carrier non-specific list of the number of flights on a representative business day, and she will identify any periods that she continues to consider severely congested and identify targets for flight reductions during those periods.
- i. At her discretion, the Administrator or her delegate may repeat steps (f) through (h), and she may continue the schedule reduction meeting as she deems necessary.
- j. If the Administrator determines that identifying carrier-specific targets would facilitate voluntary flight reductions and schedule modifications, the Administrator may advise each air carrier separately and confidentially of flight reduction targets specific to that air carrier. No carrier-specific information will

be provided to any air carrier other than information regarding that air carrier; however, the Administrator may make general assurances with respect to the overall proportionality of the flight reductions among the air carriers serving O'Hare.

- k. Following the Administrator's identification of further flight reduction targets, each air carrier attending the meeting that serves O'Hare will be invited to a separate and confidential session with representatives of the FAA Air Traffic Organization, at which the air carrier will be given the opportunity to submit a new or revised offer of flight reductions or schedule modifications.
- l. At her discretion, the Administrator or her delegate may repeat steps (j) and (k), and she may continue the schedule reduction meeting as she deems necessary.
- m. The Administrator may terminate the schedule reduction meeting at her discretion.

4. Order of the Administrator Concerning Delays at O'Hare

The FAA Air Traffic Organization will review the final offers of each air carrier attendee of the meeting and recommend a proposed flight reduction plan to the Administrator. After the Administrator's review and approval of the plan, the resulting schedule reductions, including carrier-specific limitations, will be published in the Federal Register as a final order of the Administrator. The final order of the Administrator will be in effect for no more than twelve months and will specify a method by which air carriers adversely affected by the order may be relieved of its effect. The order will also be subject to modification by the Administrator.

Please inform me if these procedures are acceptable to you.

Sincerely,

Andrew B. Steinberg

Chief Counsel

July 15, 2004

Andrew B. Steinberg, Esq.

Chief Counsel

U.S. Department of Transportation

Federal Aviation Administration

800 Independence Ave, S.W.

Washington, DC 20591

Re: O'Hare Delay Reduction Meeting

Dear Mr. Steinberg:

This letter is written in response to your July 14, 2004 letter describing the planned format of a meeting of air carriers with the Administrator of the Federal Aviation Administration ("FAA") to discuss flight reductions at Chicago's O'Hare International Airport ("O'Hare"). The meeting is being called in light of a determination by the Secretary of Transportation, pursuant to 49 U.S.C. § 41722, that the meeting is necessary to reduce flight delays during peak hours of operation. You anticipate that such a meeting would be followed by an Order of the Administrator limiting flight operations at O'Hare. You seek assurances that, provided the meeting and related activities are conducted as described in your letter, the Department of Justice would not seek to challenge as a violation of the antitrust laws any air carrier's attendance at or participation in the meeting or any carrier's unilateral actions taken to comply with an Order of the Administrator issued as a result of the meeting.

According to your letter, all carriers participating in the meeting will be advised that the meeting and all preparations for it are subject to the antitrust laws and that communications among carriers regarding competitively sensitive information, such as markets served, prices charged, and marketing plans, could result in a violation of the antitrust laws and lead to civil or criminal liability. At the beginning of the meeting, the Administrator (or her delegee) will announce that, pursuant to advice from the Department of Justice, no communication will be permitted by any air carrier representative in the presence of any representative of another air carrier regarding flight reductions at O'Hare or any other competitively sensitive subject, including but not limited to markets served, prices charged, and marketing plans.

At the meeting, the Administrator will distribute a list of the number of flights, not specific as to air carrier, currently scheduled each 15-minute period from 6 a.m. to 11 p.m., indicate any periods that she considers to be severely congested, and provide general targets for flight reductions during those periods, which will not identify which carriers' flights are targeted to be moved or eliminated. Each carrier will then be invited into a separate, confidential discussion with the Administrator during which the carrier will be asked to offer specific flight reductions or schedule changes, which shall not be made explicitly contingent on specific reductions offered by another carrier or carriers. During such discussions the Administrator may provide general assurances with respect to the overall proportionality of the flight reductions being sought by the FAA from carriers serving O'Hare.

After completion of the individual carrier sessions, the Administrator will revise the list of flights to reflect the individual discussions with the carriers. The carriers will again be given this list, which will not identify flights by carrier. If the Administrator

believes that severely congested time periods still exist, she may set revised targets and repeat the individual sessions with carriers.

If the Administrator determines that identifying carrier-specific targets is necessary to facilitate voluntary flight reductions and schedule modifications, she may advise each carrier separately and confidentially of flight reduction targets specific to that carrier, which information will not be given to any other carrier or carriers.

The Administrator will develop and approve a proposed flight reduction plan and schedule reduction, which will be published in the Federal Register as a final order. A transcript of the meeting will not be available until three business days after the Administrator formally adjourns the flight reduction meeting.

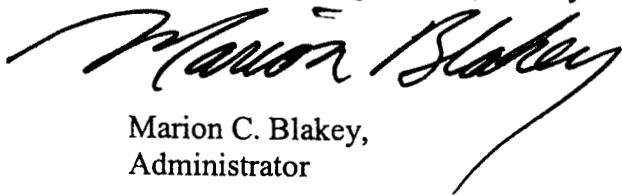
Importantly, the procedures do not provide for any meetings among the carriers without the FAA present. The procedures will not allow any discussion or negotiation among carriers about flight reductions, prices charged, or markets served. During the course of the meetings, carriers will not be told schedule reductions or modifications other carriers are offering or being asked to offer.

For these reasons, the Department has no current intention to initiate antitrust enforcement action against any carrier that participates in the FAA's flight reduction meeting and conducts itself in the manner described in your letter. This expresses the Department's current enforcement intention regarding the carriers' participation in the flight reduction meeting. The Department reserves the right to bring an enforcement action against any conduct that violates the antitrust laws.

Yours sincerely,

R. Hewitt Pate

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Issued in Washington, DC, on July 28, 2004.


Marion C. Blakey,
Administrator